

Remarks

Applicant hereby traverses the Restriction Requirement mailed October 18, 2004, which stated:

1. Restriction to one of the following inventions is required under 35 U.S.C. 121:
  - I. Claims 1-19, drawn to a method with detection of voltage differential of a cell, classified in class 320, subclass 161.
  - II. Claims 20-29, drawn to a system indicating a cell capacity for an implantable device, classified in class 607, subclass 161.
2. Inventions II and I are related as product and process of use. The inventions can be shown to be distinct if either or both of the following can be shown: (1) the process for using the product as claimed can be practiced with another materially different product or (2) the product as claimed can be used in a materially different process of using that product (MPEP § 806.05(h)). In the instant case, the cell could power a different device, such as a vehicle.
3. Because these inventions are distinct for the reasons given above and have acquired a separate status in the art because of their recognized divergent subject matter, restriction for examination purposes as indicated is proper.

(Restriction Requirement at 2.) Applicant respectfully traverses.

First, Applicant respectfully submits that Groups II and I are not related as a product and process of use (of the product, addressed by MPEP § 806.05(h)) as indicated in the Restriction Requirement. Instead, Applicant believes that Groups I and II are apparently related as process and apparatus for its practice, which is addressed by MPEP § 806.05(h), which states:

If the apparatus claims include a claim to a "means" for practicing the process, the claim is a linking claim and must be examined with the elected invention. If it is ultimately allowed, rejoinder is required. See MPEP § 809.04.

(MPEP § 806.05(h)). Accordingly, by this preliminary amendment, Applicant has added a "linking" means plus function claim 30 for performing the process of method claim 1. Therefore, Applicant respectfully submits that the MPEP requires that both Group I and Group II must be examined together. Accordingly, Applicant respectfully declines to cancel the claims of Group II.

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Second, Applicant has withdrawn (without prejudice or disclaimer) claims 28 and 29, which were the only claims that recited use of the apparatus in an implantable medical device (claim 28) and an external remote interface device (claim 29). Applicant respectfully submits that none of the other pending claims 1-27 and 30 include any language reciting use of an implantable medical device. Therefore, the Examiner's stated basis of restriction does not apply to any of these other pending claims 1-27 and 30. Accordingly, Applicant respectfully requests withdrawal of the restriction requirement, and examination of all of claims 1-27 and 30. Moreover, Applicant respectfully submits that claims 28 and 29 are species of generic independent claim 20. Therefore, if independent claim 20 is found to be allowable, Applicant respectfully requests that claims 28 and 29 be reintroduced at that time, as required by the MPEP.

RESPONSE TO RESTRICTION REQUIREMENT AND PRELIMINARY AMENDMENT

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Conclusion

Applicant respectfully submits that the claims are in condition for allowance and notification to that effect is earnestly requested. The Examiner is invited to telephone Applicant's attorney at (612) 373-6951 to facilitate prosecution of this application.

If necessary, please charge any additional fees or credit overpayment to Deposit Account No. 19-0743.


Respectfully submitted,

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By their Representatives,

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Date November 4, 2004

By 

Suneel Arora

Reg. No. 42,267

CERTIFICATE UNDER 37 CFR 1.8: The undersigned hereby certifies that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail, in an envelope addressed to: Commissioner for Patents, Ms. Amendment, P.O. Box 1450, Alexandria, VA 22313-1450 on this 4 day of November, 2004.

Paula Suchy

Name

Paula Suchy

Signature